held her. She did not complain to her parents because she was afraid she might be scolded but on the following day in the afternoon she complained to her brother-in-law named Harun and then on 19th September, 1963 made a police report.

Iswan (P.W.2) gave evidence to say that upon hearing a female voice crying for help he went towards the direction of the voice, together with Rohani, and saw the shadow of a person running away from the bushes. He then saw P.W.1 crying beside the road near some bushes and P.W.1 said that Basar had embraced her. Rohani (P.W.3) testified that when she was at her house she heard a female voice crying for help, and she went to the place from where the voice came, together with P.W.2. She saw P.W.1 standing near some bushes, crying and shivering. She asked P.W.1 what had happened and P.W.1 said that she was disturbed by Basar who had run away into the bushes. Harun (P.W.4) stated on oath that on 18th September, 1963 at about 5.30 p.m. P.W.1 informed him that on the night of 17th September, 1963 at about 11 p.m. she was held by one youth named Basar.

Notwithstanding all the evidence for the prosecution, which was not contradicted by other evidence and remained unshaken by cross-examination, the learned magistrate acquitted the respondent at the end of the case for the prosecution, his ground for such acquittal being that P.W.1's evidence could not be relied on in so far as identification alone was concerned. He stated in his grounds of judgment that a court should scrutinise very carefully any evidence relating to the identification of an accused person. I had no reason to quarrel with his general statement on that point but what he, in my opinion, failed to appreciate was that there was positive evidence about the identity of the respondent by P.W.1 who admittedly had known him for some time and had seen his face by the flashes of lightning.

There was nothing inherently improbable about the complainant's story and, as I have stated above, her evidence was neither contradicted by other evidence nor shaken by cross-examination. In the circumstances it was the duty of the learned magistrate to have called on the defence. In this connection magistrates will do well to bear in mind the following words, with which I respectfully agree, of Thomson C.J. (as he then was) in *Public Prosecutor* v. *Mohamed Ali* [1]:

"When a police witness says something that is not inherently improbable his evidence must in the first instance be accepted. If he says he saw a cow jumping over the moon his evidence is, of course, not to be accepted, but if he says he saw a cow wandering along one of the main streets of Kuala Lumpur (the sort of thing we all see every day of our lives) there is not the slightest justification for refusing to believe him. Of course if his evidence is contradicted by other evidence or is shaken by cross-examination then it becomes the business of the magistrate to decide whether or not it should be accepted. In the absence of contradiction, however, and in the absence of any element of inherent probability the evidence of any witness, whether a police witness or not, who gives evidence on affirmation, should normally be accepted."

I need hardly add that if upon the defence being called the respondent had offered an explanation which the learned magistrate considered to be reasonably true and which raised a reasonable doubt as to the truth of the prosecution case it would have been open to him to give the respondent the benefit of that doubt and to acquit him.

For the reasons I have stated I set aside the order of the learned magistrate and made an order for a retrial of the case before another magistrate.

Retrial ordered.

PUBLIC PROSECUTOR v. TOH KEE HUAT

[A.Cr.J. (Ong J.) October 28, 1964]

[K.L. — Criminal Appeal No. 57 of 1964]

Evidence — Finger-print — Found on inside surface of glass pane of car.

Penal Code s. 379 — Theft of car — Evidence.

The respondent was acquitted at the close of the prosecution case on a charge under section 379 of the Penal Code for the theft of a motor-car on the inner surface of the glass pane of which were found his finger-prints. On appeal by the Public Prosecutor.

Held: the weight of evidence of finger-prints can never be decried. In this case a clear *prima facie* case had been made out which if unrebutted warranted conviction.

Case remitted back for the learned president to call on the defence.

MAGISTRATE'S CRIMINAL APPEAL.

Nik Saghir (Deputy Public Prosecutor) for the Public Prosecutor.

Respondent in person.

Ong J.: This is an appeal by the Public Prosecutor against the decision of the president Sessions Court, Kuala Lumpur, acquitting the respondent, at the close of the prosecution, on a charge of theft of a motor-car contrary to section 379 of the Penal Code.

The following facts had been established. A locked car, left parked at night outside an office on the Ipoh Road, was missing the next morning. On the following day it was found abandoned near the junction of Treacher Road and Bukit Bintang Road. The glass on the driver's door was wound down. Dusting of this pane of glass revealed finger prints on its inner surface. The

prints were proved to be those of the respondent.

The learned president acquitted the accused at the close of the prosecution because the only evidence against the accused was his finger print and "the accused's finger-prints, among other unidentified ones on the window of the car, which was left standing in a place accessible to anyone, cannot be legally sufficient to infer his guilt."

With respect, I do not understand what is meant by "legally sufficient". At any rate, the weight of evidence of finger-prints can never be decried. The respondent's finger-print was found on the inside surface of the glass. The mark could not have been made there except after someone (if not himself) had unlawfully tampered with the locked car to gain entry. That finger-print could only have been made during the hours of darkness when the car was taken, or before its discovery next morning. The position of the mark alone makes it self-evident that it was not made by a casual passer-by.

There is no question that a clear *prima facie* case had been made out which if unrebutted warrants a conviction.

The appeal is allowed, and the order of acquittal set aside. The case is remitted back for the learned president to call on the defence.

Appeal allowed.

RE OOI CHAN ONN

[R.Cr.J. (Ong J.) November 7, 1964]

[K.L. — Criminal Revision No. 16 of 1964]

Penal Code s. 511 — Attempted theft — Whether police supervision can be imposed — Criminal Procedure Code (Cap. 6), s. 295.

A person convicted of an attempted theft is convicted of the offence of an attempt, which must be clearly distinguished from the offence of actual completed theft.

Police supervision can only be imposed under section 295 of the Criminal Procedure Code when a person, having previously been convicted of an offence punishable with imprisonment for a term of two years or upwards is convicted of any other offence also punishable with imprisonment for a term of two years or upwards. As the offence in this case of attempted theft is punishable for a term not exceeding 18 months a conviction therefor does not justify an order for police supervision.

Case referred to:—

(1) *R.* v. *Nadaison* [1933] M.L.J. 41.

CRIMINAL REVISION.

Ong J.: The accused was convicted of attempting to commit theft under section 511 of the Penal Code and sentenced to 9 months' imprisonment to be followed by police supervision for a period of 12 months. The learned magistrate has requested me to exercise my powers under Chapter XXXI with a view to revision of the order of police supervision imposed by him pursuant to section 295 of the Criminal Procedure Code on the ground that that section would not be applicable by reason of the proviso to section 511.

Police supervision can only be imposed under section 295 of the Criminal Procedure Code when a person, having previously been convicted of an offence punishable with imprisonment for a term of two years or upwards is convicted of any other offence also punishable with imprisonment for a term of two years or upwards. In my opinion, a person convicted of attempted theft is convicted of the offence of an attempt, which must be clearly distinguished from the offence of actual or completed theft.

The punishment for the offence of attempted theft is laid down in section 511 of the Penal Code, which provides that the offence of an attempt shall be punished with such punishment as is provided for the completed offence but that any term of imprisonment shall not exceed one-half of the longest term provided for the offence. This means that whatever the penalty provided for an offence, the attempt to commit such offence is similarly punishable, except that, as regards imprisonment, the term imposed shall not exceed half of the maximum term provided for the completed offence.

Accordingly in the present case I am of opinion that the offence of attempted theft is punishable for a term not exceeding eighteen months and a conviction therefor does not justify an order of police supervision.

The case of *R.* v. *Nadaison* [1] was a case of abetment but I consider that the same principle applies to attempts with reference to the validity of orders of police supervision following a conviction and that such a matter could be resolved having regard to the maximum sentence which the court could have imposed.

I, therefore, quash the order of police supervision.

Order for police supervision quashed.

SYED AHMAD AL-JUNIED & ORS. v. RESHTY

[O.C.J. (Choor Singh J.) November 7, 1964]

[Singapore — Suit No. 368 of 1961]

Landlord and Tenant — Meaning of "Premises" — Statutory tenancy — Claim for mesne profits — Control of Rent Ordinance (Cap. 242), s. 15(1)(g) — Civil Law Ordinance (Cap. 24), s. 17(4).

In this case the plaintiffs claimed as trustees of the estate of Syed Ahmed bin Abdulrahman Alsagoff recovery of possession of a piece of land in Paya Lebar. The demised land comprised an area of 550 acres, on which